Noorismail bin Abu Bakar v Public Prosecutor and another appeal

HIGH COURT (SEREMBAN) — CRIMINAL APPEAL NO NA-41S-15–12 OF 2018
AZIZUL AZMI ADNAN J
19 JUNE 2020

Criminal Procedure — Appeal — Appeal against conviction — Appellant was charged under s 15(1)(a) Dangerous Drugs Act — Whether appellant 'an arrested person' under s 31A of the Dangerous Drugs Act includes constructive arrest at the time the urine samples were taken

Criminal law — Dangerous Drugs — Chemist report — Whether failure to state in chemist report that the drug detected listed in the First Schedule of the Dangerous Drugs Act was fatal and prosecution's case flawed

This was an appeal against the conviction of the appellant who was charged under s 15(1)(a) of the Dangerous Drugs Act 1952 ('the DDA') wherein the appellant was convicted and sentenced to a fine of RM5,000 in default of which imprisonment for 12 months and an order of supervision for three years. The appellant was at the time of his arrest a policeman stationed at the Seremban 2 district headquarters. At about 11.30pm on 20 April 2017, the appellant together with one other person had visited his friend at a house located at *Perumahan Rakyat* Panchor. At approximately midnight, two motorcars arrived at the front of the house, out of which cars five persons disembarked. They subsequently identified themselves as police officers. The appellant and this two acquaintances were asked to provide identification. They were then brought to the Narcotics Investigation Division of the Negeri Sembilan police contingent headquarters. There, according to the appellant, urine samples were taken from all three of them. The appellant was informed that his urine sample tested positive for methamphetamine, whereupon he was arrested and informed of his rights under s 28A of the Criminal Procedure Code. The issues raised in the appeal were: (a) whether the accused was arrested in accordance with s 31A of the DDA to permit the admission into evidence of the urine test report prepared; (b) whether failure to state in the report that methamphetamine was a drug listed in the First Schedule of the DDA was a flaw that was fatal to the prosecution's case; and (c) in relation to the labelling of the bottles and the collection of the samples, whether the samples tested actually belonged to the accused.

Held, dismissing the appeal and affirming the decision of the magistrates court:

(1) If a urine test has not been conducted in accordance with s 31A, the presumption in s 37(k) did not apply. It was notable that, in such a case, the evidence of the urine test was not entirely precluded. It was only the presumption that was disapplied, and hence in such a case the prosecution would need to prove that the accused wilfully consumed the drug, administered it to himself or had caused the drug to be administered to him. The urine test report could still be accepted into evidence to prove that traces of the dangerous drugs in question was present in the accused (see para 13).

(2) At the time the test strip test was administered to the urine sample provided by the appellant in this case, he had already been arrested in connection with Paroi Report 1125/17. Even though this report was not in evidence, the unchallenged testimony established that the arrest had been made in connection with the trafficking and misuse of drugs. This was sufficient to satisfy the requirements of s 31A(1), which was that the appellant had been arrested on a charge of committing an offence 'against this Act'. Had an accused been arrested for an offence that was unrelated to the provisions of the DDA, it may well be successfully argued that any subsequent urine sample taken from the accused would not have complied with s 31A(1A). That, however, was not the case here (see paras 25, 27–28).

(3) There was no ambiguity in the term methamphetamine. No evidence was led to show that the expression could be used to describe compounds of differing chemical composition. Accordingly, once the expert had testified that the urine samples contained methamphetamine, it could have only meant one thing: that the accused had within him a dangerous drug that had been prescribed under Part III of the First Schedule to the DDA. The court in the judgment, no doubt at all arose in the present case that 'methamphetamine' was listed in Part III of the First Schedule to the Act. For as long the substance found to have been ingested by the accused was methamphetamine, then this ingredient of the offence under s 15(1) was proven (see para 51).

(4) There was no possibility of the bottles having been mixed up with those containing the urine specimens of any other person. This was because, immediately after he had selected each bottle (and before the urine was deposited into the bottle), the appellant signed the acknowledgment forms, which were marked as exhs P1 and P3 at trial. These forms contained the serial number of the specimen bottles, which corresponded with the serial numbers of the bottles that were subsequently tested and affixed with the labels containing the particulars of the appellant. Even if the appellant's version of events were to be believed — that there were

three specimen bottles on the table in Insp Anas' office — had the bottles been inadvertently switched, then the serial number of the bottles would not have matched the serial number set out in the acknowledgment forms. It was important to note that the appellant did not deny that he had countersigned these forms upon being handed the specimen bottles. Thus the time at which the labels were affixed onto the bottles did not matter in the final analysis. The critical fact in issue in this case was that the serial number that was printed onto the base of each specimen bottle — the contents of which had tested positive for methamphetamine — matched the serial number that was noted on the acknowledgment forms, which conclusively proved that there was no mix-up, and which conclusively established the guilt of the appellant (see paras 70–71).

[Bahasa Malaysia summary

Ini merupakan satu rayuan terhadap sabitan perayu yang dituduh dibawah s 15(1)(a) Akta Dadah Berbahaya 1952 ('ADB') yang mana perayu telah disabitkan dan dihukum dengan denda RM5,000 jika gagal bayar penjara 12 bulan dan perintah pengawasan untuk tempoh tiga tahun. Perayu pada waktu tangkapannya merupakan seorang anggota polis yang ditugaskan di IPD Seremban 2. Pada masa lebih kurang 11.30pm pada 20 April 2017, perayu bersama dengan seorang lagi telah melawat rakannya di satu rumah di Perumahan Rakyat Panchor. Lebih kurang tengah malam, dua kenderaan bermotor tiba di hadapan rumah, dari kereta tersebut lima orang telah turun. Mereka kemudiannya mengenalkan diri mereka sebagai pegawai polis. Perayu dan dua orang rakannya telah dipohon agar mereka menunjukkan dokumen pengenalan diri. Mereka telah dibawah kepada bahagian siasatan narkotik IPK Negeri Sembilan. Di sana, mengikut pengataan perayu, sampel air kencing telah diambil daripada mereka bertiga. Perayu telah dimaklumkan bahawa sampel air kencingnya telah diuji positif untuk methamphetamin, yang mana dia telah ditangkap dan dimaklumkan haknya dibawah s 28A Kanun Tatacara Jenayah. Isu yang dibangkitkan dalam rayuan ini adalah sama ada: (a) perayu telah ditangkap selaras dengan s 31A ADB untuk membolehkan laporan ujian air kencingnya diterima sebagai keterangan; (b) sama ada kegagalan untuk menyatakan dalam laporan bahawa methamphetamin merupakan dadah yang tersenarai dalam jadual pertama ADB adalah satu kecacatan yang fatal kepada kes pendakwaan; dan (c) berkaitan dengan label pada botol dan pengambilan sampel, sama ada sampel yang diuji sememangnya milik tertuduh.

Diputuskan, mengetepikan rayuan dan mengekalkan keputusan mahkamah majistret:

(1) Sekiranya ujian air kencing tidak dikendalikan selaras dengan s 31A, anggapan dibawah s 37(k) tidak terpakai. Adalah penting bahawa, dalam kes sedemikian, keterangan bahawa ujian air kencing tidak diketepikan keseluruhannya. Hanya anggapan adalah diketepikan, oleh itu, dalam

kes sedemikian, pendakwaan harus membuktikan bahawa tertuduh telah dengan sengaja mengambil dadah tersebut, atau menyebabkan dadah tersebut diberikan kepadanya. Laporan ujian air kencing tersebut masih boleh diterima sebagai keterangan untuk membuktikan bahawa kesan dadah berbahaya berkenaan adalah hadir dalam badan tertuduh (lihat perenggan 13).

(2) Pada waktu ujian *test strip* dijalankan kepada sampel air kencing yang diberikan oleh perayu dalam kes ini, dia telah pun ditangkap berkaitan dengan laporan Paroi 1125/17. Walaupun laporan ini tidak dalam keterangan, keterangan lisan yang tidak dicabar membuktikan bahawa tangkapan tersebut adalah berkaitan dengan pengedaran dan penyalahgunaan dadah. Ini adalah memadai untuk memenuhi keperluan dibawah s 31A(1), yang mana perayu telah ditangkap atas perlakuan kesalahan terhadap akta tersebut. Sekiranya tertuduh ditangkap untuk kesalahan yang tidak berkaitan dengan peruntukan ABD, ianya boleh dihujahkan bahawa apa-apa sampel air kencing yang diambil kemudiannya daripada tertuduh tidak akan mematuhi s 31A(1). Namun perkara tersebut tidak terpakai dalam kes ini (lihat perenggan 25, 27–28).

(3) Tiada keraguan dalam terma methamphetamin. Tiada keterangan telah dibawa untuk menunjukan bahawa perkataan tersebut boleh digunakan untuk menggambarkan kompound yang komposisi kimianya berbeza. Oleh itu, setelah saksi pakar telah memberi keterangan bahawa sampel air kencing tersebut mengandungi methamphetamin, ianya hanya boleh membawa satu makna: bahawa tertuduh mempunyai dalamnya dadah berbahaya yang telah dinyatakan dibawah Bahagian III Jadual Pertama Akta tersebut. Selagi mana bahan yang ditemui telah dimakan oleh tertuduh adalah methamphetamin, makan komponen kesalahan dibawah s 15(1) telah dibuktikan (lihat perenggan 51).

(4) Tiada kebarangkalian bahawa botol tersebut telah dikelirukan dengan botol yang mengandungi spesimen air kencing orang lain. Ini adalah kerana, sejurus selepas dia telah memilih botoh (dan sebelum air kencing dimasukkan ke dalam botol), perayu telah menandatangani borang akuan, yang ditandakan sebagai ekshs P1 dan P3 sewaktu perbicaraan. Borang ini mengandungi nombor siri botol spesimen, yang berpadanan dengan nombor siri botol yang kemudiannya diuji dan diletakkan label mengandungi butiran perayu. Walaupun sekiranya versi kejadian perayu dipercayai — bahawa terdapat tiga botol spesimen di atas meja pejabat Insp Anas — sekiranya botol tersebut telah bertukar, nombor siri pada botol tersebut tidak akan berpadanan dengan nombor siri dalam borang akuan terima. Adalah penting untuk menyatakan bahawa perayu tidak menafikan bahawa dia telah menandatangani borang ini selepas diberikan botol spesimen. Oleh itu, pada waktu label tersebut diletakkan

pada botol tidak perlu dihiraukan sewaktu analisa akhir, fakta isu kritikal dalam kes ini adalah nombor siri yang dicetakkan berdasarkan kepada setiap botol spesimen — yang mana kandungannya telah diuji positif untuk methamphetamin — berpadanan dengan nombor siri yang dinyatakan pada borang pengakuan penerimaan, yang secara konklusif membuktikan bahawa tiada pertukaran dan telah secara konklusif membuktikan bahawa perayu bersalah (lihat perenggan 70–71)]

Cases referred to

Ho Kiat Swee v Rex [1947] 1 MLJ 159 (refd)
Kamarul Farkaruddin Mohamed lwn Pendakwa Raya [2013] MLJU 1597; [2013] 7 CLJ 636, HC (not folld)
Loo Keck Leong v PP [1992] 2 MLJ 177; [1991] 3 CLJ 1332, SC (refd)
Pendakwa Raya lwn Mohd Safwan bin Husain [2017] 5 MLJ 255; [2017] 7 CLJ 685, CA (refd)
Pendakwa Raya lwn Mohd Safwan Husain [2016] 1 LNS 708, HC (folld)
PP v Mahathir bin Muhammad [2013] 1 MLJ 50; [2013] 2 CLJ 50, CA (refd)
Shukri bin Mohamad v PP [1995] 3 MLJ 229; [1995] 3 CLJ 799, SC (refd)
Tan Kim Ho & Anor v PP [2009] 3 MLJ 151; [2009] 3 CLJ 236, FC (refd)

Legislation referred to

Criminal Procedure Code ss 28A, 399(1), (2)
Dangerous Drugs Act 1952 ss 2(1), 15(1), (1)(a), 31A, 31A(1), (1A), 37, 37(k), 39B(1)(a), First Schedule
Poisons Act 1952

Dato' Hanif Hassan (Hanif Hassan & Co) for the appellant.
Sara Afiqah bt Zulkipli (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azizul Azmi Adnan J:

INTRODUCTION

[1] The appellant in this case was charged under s 15(1)(a) of the Dangerous Drugs Act 1952 for self-administration of methamphetamine. He was convicted and was sentenced to a fine of RM5,000, in default of which imprisonment for 12 months, and to an order of supervision for three years.

[2] He appealed against the conviction.

MATERIAL BACKGROUND FACTS

[3] The appellant was at the time of his arrest a policeman stationed at the Seremban 2 district headquarters.

[4] At about 11.30pm on 20 April 2017, the appellant together with one other person had visited his friend at a house located at *Perumahan Rakyat* Panchor. At approximately midnight, two motorcars arrived at the front of the house, out of which cars five persons disembarked. They subsequently identified themselves as police officers.

[5] The appellant and this two acquaintances were asked to provide identification. They were then brought to the narcotics investigation division of the Negeri Sembilan police contingent headquarters. There, according to the appellant, urine samples were taken from all three of them.

[6] The appellant was informed that his urine sample tested positive for methamphetamine, whereupon he was arrested and informed of his rights under s 28A of the Criminal Procedure Code.

THE GROUNDS OF APPEAL

[7] The appellant in this case raised three grounds of appeal:

(a) the accused had not been arrested pursuant to and in accordance with s 31A of the Dangerous Drugs Act 1952 so as to permit the admission into evidence of the urine test reports prepared by the representative the pathology department of the General Hospital;

(b) while the urine test reports indicated positive results for methamphetamine, the reports did not state that methamphetamine was a drug listed in the First Schedule of the Dangerous Drugs Act 1952. Learned counsel for the appellant argued that this was a flaw that was fatal to the prosecution's case, based on the authority of *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya* [2013] MLJU 1597; [2013] 7 CLJ 636; and

(c) the circumstances under which the urine samples were taken from the accused — specifically the labelling of the bottles and the collection of samples from persons detained at about the same time as the accused — raised reasonable doubts as to whether the samples tested actually did belong to the accused.

[8] Each of these grounds of appeal is considered in turn.

WAS THERE AN ARREST BEFORE THE SPECIMEN WAS TAKEN?

[9] The first ground of appeal pivoted on the question of whether the accused had been arrested at the time the urine samples were taken. Under the provisions of s 37(k) of the Dangerous Drugs Act 1952, if a dangerous drug is found to be present in the urine sample of an accused as a result of a urine test

conducted under s 31A, he is presumed to have consumed the drug or administered the drug to himself. The question thus arose whether the urine test had been conducted in accordance with s 31A, which, among others, permits a police officer not below the rank of sergeant to require an arrested person to provide a urine specimen. If the accused had not been arrested at the time the specimen was taken, then clearly the urinse test administered could not have been in compliance with s 31A, and accordingly the presumption of self-administration in s 37(k) would not apply.

THE APPLICABLE PRINCIPLES

[10] Section 31A of the Dangerous Drugs Act 1952 provides as follows:

> 31A Examination of arrested person by a medical officer.
>
> (1) When any person is arrested on a charge of committing an offence against this Act:
>
> (a) which is of such a nature; or
>
> (b) which is alleged to have been committed under such circumstances,
>
> as give reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence against this Act, it shall be lawful for a medical officer acting at the request of any police officer not below the rank of Sergeant, or any other officer in charge of a police station, or any officer of customs, and for any person acting in aid of a medical officer and under his direction, to make such an examination or examinations of the person arrested as may be reasonably necessary in order to ascertain the facts which may afford such evidence, and to use or cause to be used such force as may be reasonably necessary for that purpose.
>
> (1A) For the purpose of preservation of evidence, it shall be lawful for a police officer not below the rank of Sergeant or an officer of customs to require an arrested person to provide a specimen of his urine for the purposes of an examination under subsection (1) if it is not practicable for the medical officer or the person who is acting in aid of or on the direction of a medical officer to obtain the specimen of the urine within a reasonable period.
>
> (1AA) Any biological sample collected for the purposes of an examination under this section may be analysed by a science officer employed by the Government.
>
> (1B) Any person who, without reasonable excuse, fails to provide a specimen of his urine as may be required under subsection (1) or (1A) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding four years or to both.
>
> (2) For the purposes of this section 'medical officer' includes any person employed by the Government or a statutory authority as a medical officer or as a chemist.

[11] The plain words of sub-s (1A) make it clear that the power of a police officer not below the rank of sergeant to require a person to provide a urine

specimen is predicated on the person being first arrested.

[12] Section 37 provides for the operation of certain legal presumptions in respect of proceedings under the Dangerous Drugs Act 1952. Of relevance is sub-para (k), which reverses the evidential burden by making it incumbent upon an accused to disprove self-administration of drugs, where a test administered under s 31A has returned a positive result for a dangerous drug. Section 37(k) reads as follows:

> 37 Presumptions
>
> In all proceedings under this Act or any regulation made thereunder:
>
> ...
>
> (k) if a person is charged for an offence of consuming a dangerous drug or administering a dangerous drug to himself or suffering any other person to administer a dangerous drug to him, and any dangerous drug is found in the urine of the person charged as a result of a urine test conducted under section 31A, the person shall be presumed, until the contrary is proved, to have consumed the drug or to have administered the drug to himself or to have suffered any other person to administer the drug to him in contravention of this Act or its regulations.

[13] Thus, if a urine test has not been conducted in accordance with s 31A, the presumption in s 37(k) does not apply. It is notable that, in such a case, the evidence of the urine test is not entirely precluded. It is only the presumption that is disapplied, and hence in such a case the prosecution will need to prove that the accused wilfully consumed the drug, administered it to himself or had caused the drug to be administered to him. The urine test report can still be accepted into evidence to prove that traces of the dangerous drugs in question was present in the accused.

[14] The facts of the present case bear a striking similarity to those in the case of *Pendakwa Raya lwn Mohd Safwan bin Husain* [2017] 5 MLJ 255; [2017] 7 CLJ 685. The accused in that case was, like the appellant in the present case, a policeman. A team of anti-narcotics police officers attended at the Kuala Perlis police station, where the accused was stationed. The accused was called by the leader of the anti-narcotics team, who identified himself and informed the accused that he was suspected of being involved in drug-related activities. The accused was then directed to provide a sample of his urine.

[15] The test conducted on the urine sample indicated the presence of methamphetamine. The urine sample was subsequently sent to Pathology Department of the General Hospital in Kuala Lumpur for further analysis. The further analysis confirmed the existence of methamphetamine. The science officer who had undertaken the analysis attended court to testify.

[16] At first instance, the magistrate hearing the case found that the prosecution had failed to establish a prima facie case. The prosecution's appeal to the High Court was dismissed. The High Court was of the view that the prosecution failed to establish that the accused was an 'arrested person' within the meaning of s 31A(1A) of the Dangerous Drugs Act 1952, and that the expression 'arrest' and its cognate terms as used in s 31A did not encompass a constructive arrest. The High Court also found that the actual arrest of the accused had taken place after the urine specimen was taken from the accused.

[17] The issue before the Court of Appeal was whether the expression 'arrested person' encompassed the concept of constructive arrest.

[18] The Court of Appeal considered the two schools of thought that have emerged regarding the meaning of arrest, one requiring actual arrest and the other view that a person is regarded to have been arrested if it becomes apparent that his liberty has been sufficiently restrained to prevent his escape. Abdul Karim Abdul Jalil JCA, delivering the judgment of the court, stated:

> [28] Kami telah meneliti dan mempertimbangkan penghujahan kedua-dua pihak dan kes-kes yang dirujuk. Kami tidak berkecenderungan untuk mengikut pendekatan-pendekatan tersebut. Setelah meneliti kes-kes di atas, kami bersetuju dengan pandangan bahawa pendekatan-pendekatan tersebut sukar untuk diseragamkan (*reconcile*) dan agak malang (*unfortunate*) untuk digunakan sepertimana dikatakan oleh YA Abdul Hamid Mohamad H (ketika itu) dalam *Public Prosecutor v Abdul Rahim bin Kalandari Mustan* [2008] 6 MLJ 161. Pada kami, dalam semua perundangan yang berkenaan sama ada dalam KTJ ataupun ADB 1952, apa yang perlu ditentukan adalah sama ada telah berlakunya satu tangkapan atau tidak. Kami berpendapat penentuan isu tersebut akan bergantung pada fakta dan keadaan sesuatu kes itu. Inilah prinsip am yang terpancar daripada pertimbangan kes-kes di atas.

[19] It is clear from the judgment of the Court of Appeal that it was of the view that the distinctions between an actual arrest and constructive arrest did not provide any useful guide to determine whether an accused had been arrested within the meaning of s 31A(1) so as to empower the police to administer a urine test under s 31A(1A). Rather, the court held that the issue of whether an arrest had taken place in any particular case was a question of fact determined by reference to the facts and circumstances of the case in question. On the facts of that case, the Court of Appeal found that the prosecution had sufficiently established that the accused had been arrested for the purposes of s 31A(1A) of the Dangerous Drugs Act 1952. Even though the accused in that case had cooperated with the police, his liberty had been restrained and he had been compelled to follow the instructions that had been given prior and up to the point at which the urine specimens were collected. The fact that the accused in that case had been detained prior to the administration of the test strip test by the sub-inspector in that case was supported by the police report filed in that

case, which clearly stated that the accused had been detained on suspicion of being involved in drug-related activities prior to the administration of the urine test.

[20] From the decision of the Court of Appeal in *Pendakwa Raya lwn Mohd Safwan bin Husain* [2017] 5 MLJ 255; [2017] 7 CLJ 685, it is clear that, in order for a specimen to be collected from an accused in compliance with s 31A(1A) of the Dangerous Drugs Act 1952, it is not necessary for the accused to have been verbally informed that he was under arrest or that force would be used to restrain his movements.

THE APPLICATION OF THE PRINCIPLES TO THE PRESENT FACTS

[21] The police inspector who had led the raid at the premises where the appellant was located testified at trial as follows:

> Pada 21 April 2017, saya bertugas sebagai Inspektor Risikan di Jabatan Siasatan Jenayah Narkotik IPK Negeri Sembilan. Skop tugas saya sebagai Inspektor Risikan di Jabatan Siasatan Jenayah tersebut adalah melakukan risikan terhadap pengedaran dan penyalahgunaan dadah di Negeri Sembilan. Pada 21 April 2017, jam lebih kurang 3 pagi di pejabat JSJN IPK Negeri Sembilan, saya telah tahan dan tangkap satu lelaki Melayu bersangkut Paroi report 1125/17 bersama satu lelaki Melayu lain dan satu lelaki India. Ada 3 tangkapan. Di pejabat JSJN saya mengarahkan subjek untuk mengambil dan memilih sendiri plastik yang mengandungi botol urine. (see p 59 of the record of appeal.)

[22] The testimony of Insp Anas Fikri ('SP1') was not challenged in this regard.

[23] It can thus be seen that the appellant and his two acquaintances had been detained and arrested in connection with Paroi Report 1125/17. Paroi Report 1125/17 was not adduced as evidence. Despite this, from the testimony of Insp Anas, it is clear that the report related to the trafficking and misuse of drugs (*pengedaran dan penyalahgunaan dadah*). This would also stand to reason because the Insp Anas was attached to the anti-narcotics squad (*Jabatan Siasatan Jenayah Narkotik*).

[24] After his arrest, the appellant was asked to provide the urine specimen. The Jalan Campbell Report 005873/17 narrates that, after this specimen tested positive, the appellant was arrested again, this time in connection with an offence under s 15(1)(a) of the Dangerous Drugs Act 1952 (see p 185 of the record of appeal).

[25] It may therefore be safely concluded that, at the time the test strip test was administered to urine sample provided by the appellant in this case, he had

already been had been arrested in connection with Paroi Report 1125/17. Even though this report was not in evidence, the unchallenged testimony of Insp Anas established that the arrest had been made in connection with the trafficking and misuse of drugs. This, in my judgment, was sufficient to satisfy the requirements of s 31A(1), which was that the appellant had been arrested on a charge of committing an offence 'against this Act' (ie the Dangerous Drugs Act 1952).

[26] This in turn meant that the action by the arresting officer to require the appellant to provide a specimen of his urine had been compliance with the requirements of s 31A(1A).

[27] Now, had an accused been arrested for an offence that was unrelated to the provisions of the Dangerous Drugs Act 1952, it may well be successfully argued that any subsequent urine sample taken from the accused would not have complied with s 31A(1A). That, however, was not the case here.

[28] Because the provisions of s 31A(1A) had been adhered to, this further meant that the learned magistrate was entirely correct to have determined that the presumption of self-administration under s 37(k) applied against the appellant.

THE FINDING OF THE TRIAL JUDGE

[29] At the case for the defence, the appellant testified that he had visited his friend, Muhammad Ruza bin Alias, at the house in *Perumahan Rakyat* Panchor. He went with another friend, Darwin Kumaran a/l Pandarangan, to discuss the sale of a sound speaker. He claimed that he was served a jug of Coca-Cola, which he drank.

[30] The defence did not call Ruza or Darwin to testify (in this regard, it has to be remembered that the appellant bore the evidential burden to prove that he had not wilfully administered methamphetamine to himself).

[31] Dato' Hanif for the appellant argued that the possibility that the drink served to the appellant contained drugs and that the appellant had drunk it unwittingly could not be excluded. This, it was submitted, established a reasonable doubt sufficient to acquit the appellant.

[32] On these points, the learned magistrate found as follows:

> [66] Di dalam kes ini, saya telah merujuk kepada keseluruhan keterangan OKT di peringkat kes pembelaan ini dan mendapati bahawa pembelaan OKT adalah: (a) OKT tidak pernah pada bila-bila masa ada menggunakan, memberikan kepada

diri sendiri dadah jenis methamphetamine pada 21 April 2017 ataupun sebelum kejadian tersebut, (b) Pada masa kejadian, tujuan OKT datang ke rumah Ruza adalah semata-mata untuk berbincang dengan Ruza mengenai satu penjual sound speaker bersama dengan seorang lagi rakannya iaitu Darwin. Perbincangan tersebut adalah perbincangan yang biasa di mana pada masa kejadian juga, Ruza selaku tuan rumah sempat menghidangkan air minuman yang rasanya seperti Coca-Cola namun tidak dapat dipastikan kandungan sebenar air tersebut kepada OKT dan Darwin dan mereka telah minum bersama.

[67] Setelah meneliti keseluruhan keterangan membela diri OKT dan keterangan oleh SP1 hingga SP5 ketika kes pendakwaan, saya memutuskan bahawa keterangan membela diri OKT yang menyatakan bahawa OKT tidak pernah pada bila-bila masa ada menggunakan, memberikan kepada diri sendiri dadah jenis methamphetamine pada 21 April 2017 ataupun sebelum kejadian tersebut merupakan satu penafian OKT semata-mata dan tidak dapat diterima sama sekali oleh mahkamah ini. Saya memutuskan sedemikian kerana saya berpendapat tiada sebab untuk SP1 hingga SP5 mereka-reka keterangan terhadap OKT.

[68] Saya berpendapat dan memutuskan bahawa pembelaan yang dikemukakan oleh OKT di dalam kes ini adalah penafian OKT semata-mata dan telah gagal untuk menyangkal kes pendakwaan. Di dalam kes *Public Prosecutor v Ling Tee Huah* [1982] 2 MLJ 326, mahkamah telah memutuskan:

> A mere denial without other proof to reasonably dislodge the prosecution's evidence is not sufficient.

Di dalam kes *DA Duncan v Public Prosecutor* [1980] 2 MLJ 195 memutuskan:

> The defence was, in effect, a simple denial of the evidence connecting the appellant with the four boxes. We cannot see any plausible ground for saying that the four boxes were not his. In the circumstances of the prosecution's evidence, the High Court came, in our view, to the correct conclusion that his denial did not cast a doubt on the prosecution's case against the appellant.

[70] Oleh yang demikian saya berpendapat bahawa versi OKT bahawa tidak pernah pada bila-bila masa ada menggunakan, memberikan kepada diri sendiri dadah jenis methamphetamine pada 21 April 2017 ataupun sebelum kejadian tersebut adalah satu penjelasan yang tidak munasabah dan saya berpendapat bahawa ia hanya satu penafian kosong semata-mata dan berdasarkan kes di atas penafian semata-mata tidak menimbulkan sebarang keraguan yang munasabah ke atas kes pendakwaan. Oleh yang demikian, adalah jelas di sini bahawa OKT sememangnya telah mengguna memberikan kepada diri sendiri dadah berbahaya jenis methamphetamine yang terdapat di dalam air kencing OKT. Oleh itu, pendekatan mahkamah dalam dapatan bersalah dan sabitan ke atas OKT adalah mengikut nas undang-undang dan adalah sangat wajar.

[71] Selanjutnya, mengenai alasan OKT bahawa Ruza selaku tuan rumah sempat menghidangkan air minuman yang rasanya seperti Coca-Cola namun tidak dapat dipastikan kandungan sebenar air tersebut kepada OKT dan Darwin dan OKT telah meminum air tersebut, saya berpendapat OKT telah meminum air tersebut, saya berpendapat OKT telah mengada-adakan cerita dan pembelaannya adalah satu pembelaan pemikiran terkemudian (*afterthought*).

[72] Untuk isu ini setelah saya meneliti keterangan keseluruhan kes pendakwaan saya mendapati bahawa peguambela yang terpelajar tidak pernah menyoal balan berkenaan perkara ini semasa kes di peringkat pendakwaan sedang berlangsung kepada saksi pendakwaan. Tiada dalam mana-mana soalan balas pihak pembelaan semasa kes pendakwaan berlangsung di mana isu ini telah ditimbulkan. Oleh yang demikian saya berpendapat bahawa pembelaan ini adalah satu pembelaan '*afterthought*' dan keterangan yang diada-adakan oleh pihak pembelaan memandangkan pembelaan ini hanya timbul buat pertama kalinya semasa di dalam kes pembelaan. Sehubungan itu, saya memutuskan untuk turut menokak pembelaan OKT ini.

[73] Di dalam kes *Amran bin Ahmad lwn Pendakwa Raya* [2006] 5 MLJ 486; [2006] 2 CLJ 897, tertuduh di dalam pembelaannya terhadap pertuduhan di bawah s 376 Kanun Keseksaan telah mengemukakan bahawa beliau telah dianiaya. Walaubagaimanapun, YA Hakim Dato' Ahmad Maarop memutuskan keterangan tersebut tidak pernah ditimbulkan di dalam pemeriksaan balas tertuduh semasa kes pendakwaan dan pembelaan tersebut adalah satu *afterthought*:

> ... saya dapati soal penganiayaan ini tidak pernah ditimbulkan dan soalan-soalan spesifik mengenainya tidak pernah ditimbulkan oleh pihak pembelaan apabila SP8, SP4, SP9 dan pegawai penyiasat (SP7) kes ini memberi keterangan. Jika dakwaan mengenai penganiayaan ini benar, dan yang akhirnya mengakibatkan dia didakwa di dalam kes ini, maka sudah tentu ianya akan sentiasa di dalam ingatan perayu dan tidak ada sebab kenapa perkara sepenting itu tidak ditimbulkan dan soalan-soalan mengenainya tidak diajukan kepada SP8, SP4, SP9 dan SP7 ketika mereka disoal balas. Isu penganiayaan ini timbul buat kali pertamanya di dalam kes pembelaan. Dalam penghakiman saya, dakwaan mengenai penganiayaan itu lebih merupakan satu perkara yang difikirkan kemudian (*afterthought*) dan setelah menimbangkannya saya memutuskan bahawa ia tidak menimbulkan keraguan yang munasabah dalam kes ini.

[74] Setelah meneliti keterangan OKT, mahkamah mendapati bahawa OKT telah gagal untuk menimbulkan sebarang keraguan yang munasabah terhadap kes pendakwaan. Keterangan OKT didapati tidak lebih dari satu penafian kosong, satu pemikiran terkemudian dan satu rekaan semata-mata. Mahkamah juga tidak mempunyai sebarang alasan untuk meragui kebenaran dan kredibiliti saksi-saksi pihak Pendakwaan yang telah memberi keterangan yang jelas tentang apa yang berlaku. Mereka adalah saksi yang jujur dan tidak goyah semasa disoal balas.

[33] After carefully examining the grounds of judgment of the learned magistrate, including the passages reproduced above, I saw no reason to disagree with her findings. It is well established that findings of fact made by a trial judge are not to be disturbed by an appellate court, unless it can be shown that the trial judge's assessment of the evidence was plainly wrong: see, for example, *Tan Kim Ho & Anor v Public Prosecutor* [2009] 3 MLJ 151; [2009] 3 CLJ 236.

[34] Inspector Anas testified that he had himself administered the test strip on the appellant's urine specimen. He further testified that, when the appellant was informed that the results were positive for methamphetamine, the appellant looked a little shocked and crestfallen (p 65 of the record of appeal). The defence attempted to rely on this to corroborate their case. Yet, when the appellant testified in during the case for the defence, he said that Insp Anas was not present when the test was administered. The appellant's version of events ought to have been put to Insp Anas when he was cross-examined, but this was not done. Nor were questions regarding the alleged repeated pleas from the appellant for the test to be repeated put to Insp Anas, or to any other person who were offered to the defence by the prosecution as witnesses.

[35] Equally, the defence could have asked Insp Anas whether his team had found a jug of drinks resembling cola at the house in *Perumahan Rakyat* Panchor, and whether tests had been conducted over its contents. The failure to raise these issues — issues that clearly would have been foremost in the mind of the appellant had his contention of unintentional ingestion been true — corroborated the finding by the learned magistrate that the defence was no more than mere afterthought.

[36] For the reasons explained above, the first ground of appeal failed.

[37] Learned counsel for the appellant cited the case of *Public Prosecutor v Mahathir bin Muhammad* [2013] 1 MLJ 50; [2013] 2 CLJ 50 in support of his arguments. In that case, the Court of Appeal dismissed the prosecution's appeal against the acquittal of the accused, whom the High Court had found not to have been arrested at the time the urine test was administered. In my judgment:

(a) the ratio decidendi in that case was concerned solely with the issue whether the prosecution could validly maintain an appeal to the Court of Appeal in respect of a matter originating in the magistrates court on questions of mixed law and fact. This does not arise in the present case; and

(b) in any event, the question of whether an accused in any particular case had been arrested at any point in time was a question of fact to be determined by the particular circumstances of each case. Hence, a finding of fact in one case cannot operate as precedent for subsequent cases. Precedents are authority only for the principles of law that they establish.

THE FAILURE TO REFER TO THE FIRST SCHEDULE

[38] It was advanced for the appellant that, because the urine test reports prepared by En Muhammad Nubli Mohd Shuhaimi (SP2, the government biochemist) did not state that methamphetamine was a drug listed in the First Schedule of the Dangerous Drugs Act 1952, the appellant's conviction ought to be set aside.

[39] Dato' Hanif for the appellant relied on the authority of *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya* [2013] MLJU 1597; [2013] 7 CLJ 636. The accused in that case was also a police officer who had been convicted at first instance under s 15(1)(a) of the Dangerous Drugs Act 1952.

[40] On appeal, his conviction was quashed because the urine specimen test in that case had not been carried out by a medical officer or other person prescribed under s 399(2) of the Criminal Procedure Code (the urine test in that case was also carried out by En Nubli, SP2 in the present case). However, since the decision in *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya*, government biochemists and forensic science officers have been declared to be a person to which s 399(1) applies (see PU(B) 57 dated 14 February 2014).

[41] Having determined that the urine test report was inadmissible, the learned judge in that case went on to state as follows:

> Hujahan peguambela terpelajar bahawa P12 tidak boleh diterima oleh kerana ianya tidak memadai, tidak tepat, tidak cukup dan meragukan sebagai bukti dadah yang diperakukan oleh pegawai sains tersebut sebagai dadah berbahaya di bawah ADB. Tidak dibuktikan dengan tanpa sebarang keraguan yang munasabah bahawa perayu telah memasukkan dadah ke dalam badannya sendiri dadah berbahaya yang tersenarai di bawah Part III dan Part IV kepada Jadual Pertama di bawah ADB yang merupakan satu elemen utama dalam pertuduhan. Peguambela berhujah P12 hanya menyatakan 'Keputusan Ujian: ADA mengandungi AMPHETAMINE dan ADA mengandungi METHAMPHETAMINE' tetapi tidak menyatakan amphetamine dan methamphetamine tersebut adalah dadah berbahaya tersenarai dalam Part III dan Part IV Jadual Pertama ADB. Dihujahkan keraguan timbul oleh kerana amphetamine dan methamphetamine turut tersenarai di bawah Akta Racun 1952 Akta 366. Peguambela merujuk mahkamah ini kepada keputusan dalam kes-kes *Loo Keck Leong v Public Prosecutor* [1992] 2 MLJ 177; [1992] 3 CLJ 1332; [1992] 1 CLJ (Rep) 195; *Shukri Mohamad v Public Prosecutor* [1995] 3 MLJ 229; [1995] 3 CLJ 799; dan *Ho Kiat Swee v Rex* [1947] 13 MLJ 159; [1946] 1 LNS 6 untuk menyokong hujahan beliau atas isu ini.
>
> [31] Walaupun tiga kes yang dirujuk oleh peguambela melibatkan fakta yang agak berbeza namun prinsip yang sama terpakai dalam kes terhadap perayu dalam kes ini. Prinsip yang diputuskan dalam kes-kes tersebut adalah bahawa ahli kimia hendaklah menyatakan dengan tepat bahan dadah berbahaya tersebut seperti diperuntukkan di bawah undang-undang. Dalam kes terhadap perayu, keraguan

timbul apabila P12 gagal menyatakan amphetamine dan methamphetamine sebagai dadah berbahaya seperti disenaraikan di bawah ADB. Munafaat keraguan hendaklah sentiasa diberikan kepada seseorang tertuduh, perayu dalam dalam kes ini.

[42] The foregoing passages from the judgment in *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya* suggest that it is not sufficient for the urine test report to merely state that, for example, methamphetamine was found in the urine sample of the accused, but that it was also necessary to state that the methamphetamine that was found was a dangerous drug prescribed in Parts III and IV of the First Schedule to the Dangerous Drugs Act 1952. Three cases were cited in support of this conclusion.

[43] In the following paragraphs, I examine the three cases.

[44] In *Shukri bin Mohamad v Public Prosecutor* [1995] 3 MLJ 229; [1995] 3 CLJ 799, the Supreme Court quashed the conviction of the accused who had been convicted by the High Court under s 39B(1)(a) of the Dangerous Drugs Act 1952. The Supreme Court held that it was necessary for the chemist to specify the precise nature of cannabis that had been found, because the Dangerous Drugs Act 1952 at the material time contained references to both 'cannabis' (which was then defined in s 2(1) of the Dangerous Drugs Act 1952), and 'cannabis (Indian Hemp)' (which was listed in Part III of the First Schedule to the Act). This distinction was material, for the same weight of drugs could give rise to the presumption of trafficking in the first instance, but not in the second.

[45] The facts of the second case, *Ho Kiat Swee v Rex* [1947] 1 MLJ 159, do not appear in the reported case. It was clear, however, that the conviction of the accused was quashed by the High Court on two grounds: first, it was not apparent on the fact of the certificate issued by the chemist of the department of chemistry that it was he who had analysed the samples that had been sent to him, and secondly, while he referred to the items found on the accused's premises was 'chandu' he did not indicate that:

> ... when he refers to the articles as Chandu he was aware of the technical definition of the word 'Chandu' in the [Opium and Chandu Proclamation No 43 of 1946].

[46] *Loo Keck Leong v Public Prosecutor* [1992] 2 MLJ 177; [1991] 3 CLJ 1332 like *Shukri Mohamad v Public Prosecutor*, also concerned the dangerous drug cannabis. In this case, the chemist testified that, when he referred to cannabis:

> ... I mean cannabis as defined in the Dangerous Drugs Act 1952.

[47] The Supreme Court was of the view that, had this evidence gone unchallenged, then the necessary ingredient of the offence that the drug in question was indeed cannabis would have been proven. However, in this case, this evidence was challenged.

[48] At the time of this case, the definition of cannabis in the Act read as follows:

> 'Cannabis' means any part of any plant of the genus Cannabis from which the resin has not been extracted, by whatever name it may be designated.

[49] The position of the defence was that the plant material found to be in the possession of the accused in that case was cannabis from which the resin had already been extracted. The chemist in this case was unable to say whether resin had been extracted from the same and if so by how much. The Supreme Court held that, if the psychotropic resin was substantially extracted (but not necessarily completely extracted), then the plant material in question would cease to amount to a dangerous drug. Thus, while the tests conducted by the chemist established that there were resin in the samples, the prosecution had failed to prove that resin had not been substantially extracted from the samples. The accused was thus acquitted (the definition of 'cannabis' has since been amended to refer to plant material in which resin is found, irrespective of quantity).

[50] In each of these cases cited, the benefit of the doubt accrued to the accused in question, as it was unclear whether the samples in question were of the nature and quality as to attract the presumption of trafficking (as was the case in *Shukri Mohamad v Public Prosecutor* and *Loo Keck Leong v Public Prosecutor*) or that was proscribed by law at all (as was the case in *Ho Kiat Swee v Rex*).

[51] By contrast, there is no ambiguity in the term methamphetamine. No evidence was led to show that the expression could be used to describe compounds of differing chemical composition. Accordingly, once the expert has testified that the urine samples contained methamphetamine, it could have only meant one thing: that the accused had within him a dangerous drug that had been proscribed under Part III of the First Schedule to the Dangerous Drug Act 1952. In my judgment, no doubt at all arose in the present case that 'methamphetamine' is listed in Part III of the First Schedule to the Act. For as long the substance found to have been ingested by the accused was methamphetamine, then this ingredient of the offence under s 15(1) is proven. Unlike cannabis and chandu — expressions which may be ascribed to various chemical compounds of differing composition and which have necessitated specific statutory definitions — there is no ambiguity in the term methamphetamine. For this simple reason, I see no necessity for the urine test

reports to have expressly referred to Part III of the First Schedule to the Dangerous Drugs Act 1952.

[52] Support for this conclusion is found in the decision of the High Court in *Pendakwa Raya lwn Mohd Safwan Husain* [2016] 1 LNS 708. In that case, even though the chemist did not specifically state that the methamphetamine found in the urine sample of the accused was listed in Part III of the First Schedule to the Dangerous Drugs Act 1952, this omission did not adversely affect the prosecution's case. The High Court held:

> [36] Mahkamah ini mengambil pendekatan yang sama dalam kes *Mohd Yusof B Said*, walaupun SP3 dalam keterangan lisannya tidak menyatakan Methamphetamine tersenarai dalam bahagian III dan bahagian IV, jadual pertama, Akta itu ia tidak mencacatkan keterangan yang diberikan. Keadaan yang sama juga berlaku walaupun P11 tidak menyatakan sedemikian, ia bukannya suatu kecacatan sehingga pendakwaan gagal membuktikan kesalahan di bawah s 15(1)(a) Akta itu.

[53] When the case went on appeal, the Court of Appeal noted the findings of the High Court, without disapprobation:

> [13] Di Mahkamah Tinggi, YA Pesuruhjaya Kehakiman telah mempertimbangkan isu-isu yang berikut (alasan penghakiman, ms 15–16; rekod rayuan, Jld 1):
>
> (a) pendakwaan gagal mematuhi peruntukan s 399(1) KTJ iaitu dalam tempoh 10 hari sebelum perbicaraan menyerahkan laporan patologi (P11) kepada responden;
>
> (b) laporan patologi dan keterangan SP3 tidak boleh diterima kerana gagal menyatakan dadah jenis Methamphetamine termasuk dalam bahagian II dan IV, jadual pertama, Akta itu atau dadah yang tersenarai dalam Akta Racun 1952; dan
>
> (c) aama ada sampel air kencing yang diambil daripada responden termasuk dalam '*arrested person*' bagi maksud peruntukan s 31 (1A) Akta itu.
>
> [14] Di akhir pendengaran rayuan, YA Pesuruhjaya Kehakiman telah bersetuju dengan penghujahan timbalan pendakwa raya ('TPR') berkenaan dengan isu (a) dan (b). Berhubung isu (a), diputuskan walaupun laporan P11 tidak diserahkan kepada responden sepertimana yang dikehendaki oleh peruntukan s 399 Kanun Tatacara Jenayah ('KTJ'), perayu telah memanggil SP3 sebagai saksi semasa perbicaraan. Dalam keadaan ini, laporan P11 boleh dikemukakan dan diterima sebagai keterangan sokongan. Manakala bagi isu (b), YA Pesuruhjaya Kehakiman memutuskan bahawa keterangan SP3 yang mengesahkan P10 mengandungi methamphetamine, yang disokong juga oleh laporan P11, sudah memadai untuk membuktikan dadah itu sebagai dadah berbahaya dalam Bahagian III dan IV ADB 1952. Puan majistret didapati terkhilaf dalam menolak keterangan dan pembuktian tersebut.

[54] Before me, Dato' Hanif for the defence raised the same argument that found favour with the magistrate in that case. It was contended that the failure

to specify that methamphetamine found in the urine sample was listed in Part III of the First Schedule raised a reasonable doubt because methamphetamine is also subject to regulation under the Poisons Act 1952.

[55] I am unable to accept this argument, for the simple reason that the accused had been charged for self-administering the drug under the Dangerous Drugs Act 1952 and not for any other offence. The fact that possession of methamphetamine was an offence under the Poisons Act 1952 is of no particular consequence.

[56] For the reasons explained above, I respectfully decline to follow the decision in *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya* in as far as it related to the requirement that the urine test report must specify that the methamphetamine that was detected in the urine sample of an accused was a dangerous drug prescribed under Part III of the First Schedule to the Dangerous Drugs Act 1952.

[57] In any event, the case of *Kamarul Farkaruddin Mohamed lwn Pendakwa Raya* can also be distinguished because, even though the test reports by En Nubli did not specify that the methamphetamine found in the urine of the appellant was a dangerous drug regulated under the Dangerous Drugs Act 1952, En Nubli attended court in the present case and had stated as much in his oral testimony:

> Di dalam Laporan ini keputusan Ujian OKT adalah positif Methamphetamine. Dalam pengetahuan saya Meth ini terkandung di bawah jadual pertama bahagian ketiga Akta Dadah Berbahaya 1952. (see p 84 of the record of appeal.)

[58] As there was no challenge on En Nubli's assertion during cross-examination, I fail to see how it can be said that a reasonable doubt exists as to whether the methamphetamine found in the urine specimen of the appellant was a dangerous drug within the meaning of the Dangerous Drugs Act 1952.

[59] For the reasons explained above, the second ground of appeal also failed.

THE CIRCUMSTANCES UNDER WHICH THE SPECIMENS WERE COLLECTED

[60] It was advanced for the defence that the circumstances under which the urine samples were taken from the accused raised reasonable doubt as to whether the samples tested actually did belong to the accused. Two separate issues were raised:

(a) first, that the specimen bottles had been attached with the labels after the urine specimens had been collected, postulating the possibility that the labels may have been affixed to the wrong bottles; and

(b) secondly and allied to the first point above, that urine samples had also been taken from Ruza and Darwin at about the same time as the appellant, which was said to have raised the further possibility that the specimen bottles had been mixed up.

[61] Regarding the manner in which the urine specimens of the appellant were taken, the testimony of Insp Anas ('SP1') was recorded in the notes of evidence at pp 59–67 of the record of appeal.

[62] Inspector Anas informed the court that the specimen bottles were selected by the appellant himself. These bottles were contained in sealed foil bags. Each bottle was imprinted with a serial number that corresponded with a serial number on the bag in which the bottle was contained.

[63] According to Insp Anas, the appellant was asked to tear the first foil bag open, which contained the bottle bearing the serial number 1048375. The appellant was then asked to countersign a form titled *Borang Akuan Pemberi* (exh P1), on which the serial number of the bottle was noted. The appellant did not deny having countersigned the acknowledgment form upon being handed the specimen bottle. The appellant was then escorted to the toilet by Insp Anas and another officer, both of whom witnessed the appellant filling the bottle with a sample of his urine.

[64] From the toilet, they went back to the JSJN office, where he appellant was asked to select five test strips that were to be used to undertake an early detection test of the urine samples. The five test strips were then dipped in the urine specimen in the presence of the appellant. The appellant was informed of the results of the test (which indicated positive results for methamphetamine and amphetamine) and then was asked by Insp Anas to close the bottle.

[65] According to Insp Anas, it was then that he completed the label on the bottle and sealed the bottle.

[66] Under cross-examination, Insp Anas was queried as to how he could have included the police report number on the bottle, when the police report was only done later, after both specimen bottles were sealed. This meant that the police report number would not yet have been available at the time the specimen in the first bottle was tested. He explained that the details of the report were filled in later. Nonetheless, at the time he pasted the label onto the bottle, the details of the name of the appellant, his identity card number, the

name and signature of the examining person, the date of the sample and the results of the preliminary test had all been completed (see p 77 of the record of appeal).

[67] According to the appellant, when he returned from the toilet, he was called into Insp Anas' office, and his urine sample was placed on a table, together with the samples from Ruza and Darwin. Because there were three bottles of urine specimen on the table, it was contended that the court could not exclude the possibility that the bottles could have been mixed up, with the label being affixed to the wrong bottle.

[68] Inspector Anas denied that there were three bottles of urine specimens on a table at the same time. According to him, Ruza and Darwin had been tested earlier.

[69] After sealing the first bottle, the whole process was repeated for the second bottle, bearing the serial number 1048361.

[70] In my judgment, there was no possibility of the bottles having been mixed up with those containing the urine specimens of any other person. This was because, immediately after he had selected each bottle (and before the urine was deposited into the bottle), the appellant signed the acknowledgment forms, which were marked as exhs P1 and P3 at trial. These forms contained the serial number of the specimen bottles, which corresponded with the serial numbers of the bottles that were subsequently tested and affixed with the labels containing the particulars of the appellant. Even if the appellant's version of events were to be believed — that there were three specimen bottles on the table in Insp Anas' office — had the bottles been inadvertently switched, then the serial number of the bottles would not have matched the serial number set out in the acknowledgment forms. It is important to note that the appellant did not deny that he had countersigned these forms upon being handed the specimen bottles.

[71] Thus the time at which the labels were affixed onto the bottles did not matter in the final analysis. The critical fact in issue in this case was that the serial number that was printed onto the base of each specimen bottle — the contents of which had tested positive for methamphetamine — matched the serial number that was noted on the acknowledgment forms, which conclusively proved that there was no mix-up, and which conclusively established the guilt of the appellant.

[72] I would, however, make the following observation. Having examined the photographs of the exhibits in this case carefully, I could not discern any variation in the quality of handwriting of Insp Anas on the labels that were

affixed to the specimen bottles. If what he had testified was true — that the police report details were added later — then it would be reasonable to expect that there would be some variation or distortion in his script when he came to write the details of the police report on the label, because by this time, the labels would have been affixed onto the specimen bottles, which would have presented a convex surface to Insp Anas.

[73] Yet, an examination of the photographs at exhs P2 and P4 does not reveal the slightest difference in the quality of the script setting out the details that were purportedly filled in before the label was affixed, and the details of the police report, which were purportedly filled in later. This, in my view, would tend to support the conclusion that the bottles were not labelled until after the police report was made. This, however, would not have affected the outcome of the case, because the serial number of the bottles precluded any reasonable doubt arising in this case that the urine specimens contained in bottles 1048375 and 1048361 were those of the appellant.

[74] For these reasons, the third ground of appeal also failed. The appellant's appeal in this case is accordingly dismissed in its entirety, and his conviction thus affirmed.

Appeal dismissed.

Reported by Izzat Fauzan